



Attracting and Protecting Seasonal Workers from third countries in the EU

Common Template for EMN Study 2020

Final version: 28 February 2020

Deadline for national contributions: 29 May 2020

1 STUDY AIMS

- 1) To better understand the profile of seasonal workers and the sectors they work in (country of origin, age, gender, skills level, sectors of employment, etc.);
- 2) To analyse if measures are in place to attract seasonal workers and the extent to which seasonal workers fill labour market needs of Member States;
- 3) To analyse the application of the protective aspects of the Seasonal Workers Directive (rights of seasonal workers).

The study will provide an overview of national experiences with admitting and employing seasonal workers from third countries more than three years after the Seasonal Workers Directive (2014/36/EU) started applying and will contribute to the Commission implementation report on the Directive planned for the year 2020.

1.1 TARGET GROUPS / AUDIENCES

The target audience are national and EU officials/practitioners, decision makers concerned with the immigration of third-country seasonal workers, social partners (e.g. employers' organisations and trade unions) associations, social partners, and NGOs.

2 SCOPE OF THE STUDY

The study primarily covers the category of third-country nationals who enter and reside in an EU Member State for the purpose of seasonal work within the framework of the Seasonal Workers Directive. In a few cases, questions also concern those who may be considered seasonal workers but are not covered by the Directive, as they have a different temporary work or residence status. The Directive is not applicable in Denmark, Ireland, Norway and the United Kingdom. Hence, as far as these (Member States) are participating in this EMN study, they are asked to report on equivalent national measures.

As far as policies and legislation regarding seasonal workers is concerned, this study shall reflect the most recent situation and developments in the Member States, therefore focusing on 2019, whilst also covering, if relevant, policy and legal developments over the past five years. If reasonable, contributing EMN NCPs may also include planned legal or policy developments that have not yet come into effect at the time of writing.

As regards statistics, the study shall cover the period 2016 to 2019.

3 EU LEGAL AND POLICY CONTEXT

Seasonal work is a type of temporary employment linked to specific periods of the years and to specific economic sectors, such as agriculture or the tourist industry. In EU Member States, seasonal work is carried out both by EU citizens and third-country nationals. The European Commission estimates that over 100 000 non-EU seasonal workers come to the EU every year,¹ and given that seasonal workers are becoming increasingly important in some Member States as a means to fill labour market needs, the protection of their rights has received increased attention from EU and national policy-makers in recent years. As noted by Eurofound,² seasonal workers are often treated less favourably than permanent workers in terms of legal entitlements, benefits offered by employers and other employment conditions.

A key development in this area is the Seasonal Workers Directive (Directive 2014/36/EU) adopted in 2014, which aims to support the effective management of migration flows for this specific category of seasonal temporary migration and to ensure decent working and living conditions for seasonal workers, by setting out fair and transparent rules for admission and stay and by defining the rights of seasonal workers, while at the same time providing for incentives and safeguards to prevent overstaying or temporary stay from becoming permanent.” This is to be achieved through clearer and more harmonised admission rules and working conditions set out in the Directive, and thereby also help prevent exploitation and protect the health and safety of seasonal workers. The Directive also encourages the circular movement of seasonal workers between the EU and their countries of origin through the introduction of a facilitated re-entry procedure for subsequent seasons. Since the adoption of the Directive, Member States are no longer permitted to implement parallel national schemes for the admission of seasonal workers. However, Member States may regulate the volumes of admission for seasonal workers covered by the Directive as well as for those who are outside of the Directive’s scope. However, as the Directive gives Member States some flexibility to determine which sectors are seasonal, it is possible that in some Member States, not all third-country nationals who undertake a form of seasonal work, or work of a cyclical nature, are covered by the Directive, and that these are instead covered by national schemes.

4 PRIMARY QUESTIONS TO BE ADDRESSED BY THE STUDY

The study follows the hypothesis that although the Directive offers higher protection standards for seasonal workers, it may have not fully reached its objective. The Directive leaves room for interpretation as regards the rights and standards to be granted to seasonal workers, possibly leading to diverging practices at national level (e.g. how have Member States interpreted the “adequate standard of living” requirement with regard to accommodation in Article 20). Moreover, in some Member States, not all those third-country nationals who undertake some form of cyclical / seasonal work appear to fall under the Directive and they may therefore be subject to different rights. Secondly, the study is expected to reveal wide differences in the extent to which Member State actively seek to attract seasonal workers from third countries to fill labour market needs. Some Member States may address any labour market needs with EU citizens’ seasonal workers, or due the nature of their labour market may not require this type of workers. On the basis of these hypotheses, the study will focus on the following primary questions:

- What is the profile of third-country national seasonal workers in the EU?
 - What is the age, country of origin, gender, skills level, etc. of seasonal workers?
 - In what sectors are they mostly employed?
- Do Member States place specific efforts on attracting seasonal workers, with a view to addressing labour market needs?
 - Do Member States rely on seasonal workers from third countries to fill labour market needs? If yes, in which sectors?

¹ https://ec.europa.eu/home-affairs/what-we-do/policies/legal-migration/work_en

² <https://www.eurofound.europa.eu/observatories/eurwork/industrial-relations-dictionary/seasonal-work>

- How do Member States facilitate the re-entry of seasonal workers?
- How does the Seasonal Workers Directive achieve its goal of protecting seasonal workers?
 - What rights do seasonal workers enjoy in the Member States?
 - What monitoring systems for seasonal workers and their employers are in place in the Member State?

5 RELEVANT SOURCES AND LITERATURE

- EMN 2011 study: Temporary and Circular Migration empirical evidence, current policy practice and future options, - https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/emn-studies/circular-migration/0a_emn_synthesis_report_temporary_circular_migration_publication_oct_2011_en.pdf
- Temporary and circular migration: opportunities and challenges, http://www.epc.eu/documents/uploads/pub_1237_temporary_and_circular_migration_wp35.pdf
- Commission Staff Working Document "Fitness Check on EU legislation on legal migration", SWD(2019)1055 and SWD(2019)1056, 29.03.2019, https://ec.europa.eu/home-affairs/what-we-do/policies/legal-migration/fitness-check_en
- Fudge, J. & Herzfeld Olsson, P. (2014). The EU Seasonal Workers Directive: When Immigration Controls Meet Labour Rights. European Journal of Migration and Law 16 (2014), 439, 466. Available at: http://www.labourlawresearch.net/sites/default/files/papers/Seasonal%20Workers%20Directive%20%20EMIL_016_04_439-466.pdf
- Zoetewij-Turhan, M.H. (2017). The Seasonal Workers Directive: '...but some are more equal than others'. European Labour Law Journal 2017, Vol. 8(1) 28-44. Available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/documents/policies/legal-migration/201712_article_seasonal_worker_directive_legal_migration_consultation_en.pdf.

6 AVAILABLE STATISTICS

As far as comparable statistics are concerned, Eurostat provides the following datasets in relation to seasonal workers:

- Authorisations issued for the purpose of seasonal work by economic sector, sex and citizenship [migr_ressw2]. **Note:** Eurostat data only covers the years 2017 and 2018; data is (currently) not available for both or one of the years for AT, BG, BE, CY, CZ, DE, EL, FI, FR, IE, LU, MT, NL, NO, PL, PT, SE, SK.
- Authorisations for the purpose of seasonal work by status, length of validity, economic sector and citizenship [migr_ressw1_1]. **Note:** Eurostat data only covers the years 2017 and 2018; data is (currently) not available for both or one of the years for AT, BE, BG, CY, CZ, DE, IE, EL, FI, FR, LU, MT, NL, PL, SE.
- First permits issued for remunerated activities by reason, length of validity and citizenship [migr_resocc].

The relevant Eurostat data will be extracted from the above-mentioned datasets centrally by the EMN Service Provider (ICF) for the purpose of the synthesis report. Each EMN NCP will receive the datasets extracted from Eurostat for your Member State by 13 March 2020, with the request to complete these with any missing data. Kindly note that the data provided should be based on the Eurostat definitions of the respective datasets as much as possible. Any deviances from this should be noted in a comment, as well as reasons for unavailability (if applicable).

Kindly note the following: datasets migr_ressw2 and migr_ressw1_1 count the number of permits/authorisations/notifications issued for the purpose of the directives allowing double counting of same persons during the year. Therefore, the unit of measure is the number of permits/authorisations/notifications for these data collections, instead of number of persons as it is in other statistics on residence permits. Please see the respective Eurostat metadata for further details:

https://ec.europa.eu/eurostat/cache/metadata/en/migr_res_esms.htm#meta_update1575469383640

7 DEFINITIONS

According to the EMN Glossary,³ a **seasonal worker** is defined as "a third-country national who retains their principal place of residence in a third country and stays legally and temporarily in the territory of an EU Member State to carry out an activity dependent on the passing of the seasons, under one or more fixed-term work contracts concluded directly between that third-country national and the employer established in that EU Member State".

8 ADVISORY GROUP

Core AG members are in **bold**.

- **LV EMN NCP (Chair, Stanislavs Lopatinskis and Ilze Siliņa-Osmāne)**
- **COM (Helene Calers, Silvio Grieco, DG Home)**
- AT EMN NCP (Alexander Spiegelfeld)
- ES EMN NCP (Francisco Martos Leal)
- FR EMN NCP (Christelle Caporali-Petit, Anne-Cécile Jarasse)
- **HU EMN NCP (Gábor Vető)**
- **LU EMN NCP (Adolfo Sommaribas)**
- SI EMN NCP (Helena Korosec)
- **Odysseus network expert (Ulrike Brandl, University of Salzburg)**
- **ICF (EMN Service Provider)**

9 TIMETABLE

The following tentative timetable has been proposed for the Study going forward:

Date	Action
28 February 2020	Launch
29 May 2020	Submission of national reports by EMN NCPs
17 July 2020	First synthesis report to COM (1 week to provide comments)
24 July 2020	Deadline for comments (1 week to address comment and finalise)
31 July 2020	Circulation of the first SR to all NCPs (2 weeks to comment)
14 August 2020	Deadline for comments
28 August 2020	Circulation of the second draft to all NCPs (2 weeks to comment)
11 September 2020	Deadline for comments
18 September 2020	Circulation of the third draft to all NCPs (2 weeks to comment)

³ EMN Glossary Version 6.0, available at https://ec.europa.eu/home-affairs/what-we-do/networks/european_migration_network/glossary_search/seasonal-worker_en

Date	Action
2 October 2020	Deadline for comments
End of October 2020	Publication

10 Template for national contributions

The template provided below outlines the information that should be included in the national contributions of EMN NCPs to this Study. For national contributions, the total number of pages should not exceed **35-40 pages**, including questions and excluding the Statistical Annex. A limit of **25-30 pages** will also apply to the synthesis report, in order to ensure that it remains concise and accessible.

Common Template of EMN Study 2020

Attracting and Protecting Seasonal Workers from third countries in the EU

National Contribution from *the Netherlands*

Disclaimer: The following information has been provided primarily for the purpose of contributing to a synthesis report for this EMN study. The EMN NCP has provided information that is, to the best of its knowledge, up-to-date, objective and reliable within the context and confines of this study. The information may thus not provide a complete description and may not represent the entirety of the official policy of the EMN NCPs' Member State.

Top-line factsheet [max. 1 page]

*The top-line factsheet will serve as an overview of the **national contribution** introducing the study and drawing out key facts and figures from across all sections, with a particular emphasis on elements that will be of relevance to (national) policy-makers. Please add any innovative or visual presentations that can carry through into the synthesis report as possible infographics and visual elements.*

Please provide a concise summary of the main findings of Sections 1-3:

Introduction

The aim of this study on seasonal workers is (i) to better understand the profile of seasonal workers and the sectors they work in, (ii) to analyse if measures are in place to attract seasonal workers and the extent to which seasonal workers fill labour market needs and (iii) to analyse the application of the protective aspects of the Seasonal Workers Directive (rights of seasonal workers). The study will provide an overview of national experiences with admitting and employing seasonal workers from third countries more than three years after the Seasonal Workers Directive (2014/36/EU) started applying and will contribute to the Commission implementation report on the Directive planned for the year 2020. EMN Netherlands, as the Dutch national contact point for the EMN, is responsible for providing information about the migration policies in the Netherlands. In this study, EMN Netherlands has examined the approach towards the entry and stay of third-country national seasonal workers in the Netherlands.

Overall policy approach towards third-country national seasonal workers

Before the Directive had been implemented in the Netherlands and national schemes were applicable to seasonal workers, no work permits or residence permits had been granted to seasonal workers since 2011. The most important reason for this was the expansion of the European Union, offering the free movement of employees from the new Member States. Over the last years, the labour market needs could always be satisfied by the national labour supply or by EU/EER-nationals. Therefore, when the Directive was established, the Netherlands continued with a restrictive admission policy. In the past, only residence permits for seasonal workers within the sector agriculture and horticulture have been granted in the Netherlands. Therefore, the Netherlands has only considered this sector to be falling under the scope of the Directive. Also, a labour market test applies to applicants for seasonal work. If there are labour shortages in the Netherlands, the Employee Insurance Agency (UWV) will first assess whether there are Dutch nationals, other EU/EER-nationals or third-country nationals who are legally residing in the Netherlands and free on the labour market who can fulfil the job vacancy. Only if this is not the case, a third-country national can be hired as a seasonal worker and will receive a work permit. So far the latter has not occurred, and therefore no third-country seasonal workers have been admitted to the Netherlands under the Directive. A minimal usage was also expected, as stated in the the explanatory memorandum of the implementation of the Directive.

No attraction of seasonal workers

Because the labour market needs could be satisfied by the national labour supply or by EU/EER-nationals in the last few years, the Netherlands does not place efforts on attracting seasonal workers to address labour market needs. It is clear that the entry and stay of seasonal workers from third countries is not part of the overall policies on migration and there is no reliance on this category of labour supply. This is also reflected in the fact that the Netherlands does not have alternative categories of migrant workers who perform temporary work of a cyclical nature who are not covered by the Seasonal Workers Directive. Because of this approach towards seasonal workers, there have not been any evaluations of the implementation of the Seasonal workers Directive or good practices in relation to the attraction of seasonal workers.

Protection of seasonal workers

In the Netherlands the implementation of the different articles of the Seasonal Workers Directive did not always demand for changes in the established national policy and law on seasonal workers. In a lot of cases, no procedures for protection specifically adjusted to third-country national seasonal workers have been established. The protection of potential future seasonal workers and their rights would in theory be covered under the general procedures for protection of workers. Because no seasonal workers have been admitted to the Netherlands in the last few years, the question about the way future seasonal workers would be protected is for the moment hypothetical.

General application procedure for seasonal work and actors involved

So far, no residence permits for seasonal workers have been issued. Nevertheless, the general application procedure for such a permit is as follows. The Immigration and Naturalisation Service (IND) is the responsible actor for the issuing of residence permits. When a third-country national wants to stay and work in the Netherlands as a seasonal worker, the third country national or the employer has to apply for a Single Permit. The Single Permit combines the residence permit and the work permit (TWV) and entitles the third-country national to stay and work in the Netherlands. The employer can submit the application for the potential seasonal worker, or he or she can submit the application abroad to the Dutch representation at the embassy or consulate in the country of origin. The IND will take a decision on the application and asks advice from the Netherlands Employees Insurance Agency (UWV) about the labour market aspect. UWV assesses the request for advice based on the criteria of the Foreign Nationals Employment Act (Wav). The third-country national can carry out seasonal work for a maximum of 24 weeks.

Conclusion

The Netherlands did not rely on seasonal workers from third countries to fill labour shortages on the labour market in the last few years. There is an application procedure available and general procedures on the protection of workers would apply, but the entry and stay of seasonal workers from third countries is not part of the overall policies on migration.

Section 0: Impact of COVID-19

- a. Has the COVID-19 situation affected the seasonal workers admission policy of your Member State with regard to third-country nationals?

Yes

No

If yes, please explain how:

- b. What measures regarding seasonal work have been taken or are planned as a result of the COVID-19 situation?

Please explain:

In the Netherlands, no measures regarding seasonal work have been taken or are planned as a result of the COVID-19 situation.

Section 1: Profile of seasonal workers

Research Question 1: What is the profile of third-country national seasonal workers in the EU?⁴

Please note that all questions in this section refer to seasonal workers covered by the Directive, except for questions 2b, 11, 12 and 13.

Sub-questions:

1. Has your Member State admitted third-country seasonal workers under the Directive?
-

⁴ This question does not have to be answered by EMN NCPs. This question will guide the narrative for the section in the synthesis report.

Yes No *If no, please explain why.*

No, in the Netherlands no third-country seasonal workers under the Directive have been admitted.

In the Netherlands, there is a restrictive admission policy in general. Therefore, also the admission policies with regard to seasonal workers are restrictive. Seasonal workers can apply for a Single Permit, which combines a residence permit and a work permit.⁵ In order to be granted a work permit, the labour market test applies. The Employee Insurance Agency (UWV) will first assess whether there are Dutch nationals, other EU/EER-nationals or third-country nationals who are legally residing in the Netherlands and free on the labour market who can fulfil the job vacancy. Only if this is not the case, a third-country national can be hired and will receive a work permit. So far, the labour market needs could always be satisfied. Therefore, no third-country seasonal workers have been admitted to the Netherlands.

Before the Directive had been implemented in the Netherlands and national schemes were applicable to seasonal workers, no work permits or residence permits had been granted to seasonal workers since 2011 either. The most important reason for this was the expansion of the European Union, offering the free movement of employees from the new Member States.⁶

2. What are the sectors covered by the Seasonal Workers Directive in your Member State?⁷ *Please explain.*

In the Netherlands there is one sector covered under the Seasonal Workers Directive for which a residence permit can be obtained as a seasonal worker. This is the sector 'agriculture and horticulture'.⁸

The Seasonal Workers Directive determines that the sectors that fall under the cover of this directive, should be activities dependent on the passing of the seasons, which means 'an activity that is tied to a certain time of the year by a recurring event or pattern of events linked to seasonal conditions during which required labour levels are significantly above those necessary for usually ongoing operations'.⁹ In the past, only residence permits for seasonal workers within the sector agriculture and horticulture have been granted in the Netherlands. Therefore, the

⁵ Employee Insurance Agency (UWV), 'To request a work permit', <https://www.werk.nl/werkgevers/wervingsadvies/werkvergunning/aanvragen/>, 18 March 2020.

⁶ *Parliamentary Papers*, 2016-2017, 34590, nr. 3.

⁷ Art.2(2) of the Seasonal Workers Directives requires Member States to list those sectors of employment which include activities that are dependent on the passing of the seasons requires⁷ To be cross-checked with Eurostat data

⁸ Immigration- and Naturalisation Service (IND), 'Seasonal worker', <https://ind.nl/werk/werken-in-Nederland/Paginas/Seizoenarbeider.aspx>, 18 March 2020.

⁹ Art. 3 (c) Directive 2014/36/EU of the European Parliament and of the Council on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers.

Admission policies of seasonal workers from third countries in the EU and Norway

Netherlands has only considered this sector to be falling under the scope of the Directive. There has been a consultation with social partners, which resulted in the same observation.¹⁰

- a. In which sector(s) were seasonal workers mostly employed in 2018?¹¹

Please explain.

This question is not applicable to the Netherlands. No third-country seasonal workers under the Directive have been admitted in the Netherlands in 2018.

- b. Are there sectors of seasonal work that are not covered by the Directive?

Yes

No

If yes, please explain.

3. What were the top-5 countries of origin of seasonal workers in your Member State in 2018?¹²

Please list the top-5 countries of origin in 2018 for the number of authorisations granted for seasonal workers in line with the Directive (this can include both visas and residence permits). If applicable, please comment on any specific observations or trends with regard to the country of origin (e.g. that seasonal workers from a specific third country are particularly prevalent in a certain sector).

This question is not applicable to the Netherlands. No third-country seasonal workers under the Directive have been admitted in the Netherlands in 2018.

4. What was the main age group of seasonal workers who received an authorisation in 2018 in your Member State?¹³

Please state the main age group. If applicable, please comment on any specific observations or trends with regard to the age group.

¹⁰ *Parliamentary Papers*, 2016-2017, 34590, nr. 6.

¹¹ Please cross-check with Eurostat data. If data for your Member State is not available on Eurostat, please use the same categorisation of sectors provided in Eurostat to the extent possible.

¹² Please cross-check with Eurostat data. If data for your Member State is not available on Eurostat, please use the same categorisation of sectors provided in Eurostat to the extent possible.

¹³ Please refer to the following age groups in your answer: 15-19; 20-24; 25-29; 30-34; 35-39; 40-44 etc.

Admission policies of seasonal workers from third countries in the EU and Norway

This question is not applicable to the Netherlands. No third-country seasonal workers under the Directive have been admitted in the Netherlands in 2018.

5. What was the gender distribution of seasonal workers who received an authorisation in 2018 in your Member State?

Please explain. If applicable, please comment on any specific observations or trends with regard to gender distribution (e.g. that mostly men are employed in the agricultural sector)?

This question is not applicable to the Netherlands. No third-country seasonal workers under the Directive have been admitted in the Netherlands in 2018.

6. Does your Member State have a minimum salary set in law?

Yes

No

If yes, please state the amount (in euros):

There is no specific minimum salary set in law for seasonal workers (only a general minimum salary that applies to all types of work). One of the conditions in order to obtain a residence permit as a seasonal worker within the sector agriculture and horticulture, is that the employer should offer a salary that is conform the market. This is in principle the loan set in the collective labour agreement of the relevant sector. The eventual amount depends on the age and the grade or level of the employee.

7. What was the average/minimum salary of seasonal workers in 2018?

Please describe. If applicable, please comment on any specific observations or trends with regard to the average/minimum salary.

This question is not applicable to the Netherlands. No third-country seasonal workers under the Directive have been admitted in the Netherlands in 2018.

8. What was the average duration of stay of third-country nationals who were granted authorisation for seasonal work in 2018 in your Member State?

Please describe. If applicable, please comment on any specific observations or trends with regard to the duration of stay.

This question is not applicable to the Netherlands. No third-country seasonal workers under the Directive have been admitted in the Netherlands in 2018.

9. Is there a specific period of the year where there is more need for seasonal workers?

Yes

No

If yes, which period is this (e.g. spring, summer, autumn, winter)?:

Admission policies of seasonal workers from third countries in the EU and Norway

There is more need for seasonal workers from EU/EER-countries in the sector of agriculture for the harvest and processing of crops in certain periods of the year.¹⁴ Because the supply of workers from EU/EER-countries meets the demand on the labor market, there is not a specific period of the year where there is more need for third-country seasonal workers in the Netherlands falling under the Directive.

10. Does your Member State collect information about the skills level of seasonal workers (for example information on education or qualification level, language level or level of experience of the seasonal workers)?

Yes
 No¹⁵

If yes, what was the average skills level in 2018 (e.g. low-, medium-, or highly-skilled)? If applicable, please comment on any specific observations or trends with regard to the skills level.

11. Are there any alternative categories of migrant workers who perform temporary work of a cyclical nature who are not covered by the Seasonal Workers Directive? *Please only consider those categories of seasonal workers which show the same characteristics, or very similar ones, as those covered by the Directive (duration of stay in Member State, cyclical nature of their work, main residence outside the Member State, etc.)?*

Yes
 No¹⁶

If yes, what percentage (roughly) of seasonal workers in your Member State are covered through these alternative categories?

12. If applicable, what are the main differences between those migrant workers covered by the Seasonal Workers Directive and those not covered by the Directive in terms of their background information (age, gender, country of origin)?

Please explain:

This question is not applicable to the Netherlands, as there are no alternative categories of migrant workers who perform temporary work of a cyclical nature who are not covered by the Seasonal Workers Directive.

13. In your Member State, are seasonal work activities known to be performed by irregular migrants?

¹⁴ Information provided for by the Ministry of Social Affairs and Employment on 2 April 2020.

¹⁵ Information provided for by the Immigration and Naturalisation Service and the Employee Insurance Agency on 31 March and 7 April 2020.

¹⁶ Information provided for by the Ministry of Justice and Security and Social Affairs and Employment on 5 March and 2 April 2020.

Yes No

If yes, is there data/information available on the magnitude and the characteristics of the seasonal work activities performed by irregular migrants? Please explain.

Section 2: Attraction of seasonal workers to address labour market needs

Research Question 2: To what extent do Member States place specific efforts on attracting seasonal workers to address labour market needs?¹⁷

Please note that all questions in this section refer to seasonal workers covered by the Directive, except for question 19.

Sub-questions:

14. Is the entry and stay of seasonal workers from third countries part of your overall migration policy?

Yes No

Please explain.

In The Netherlands, the entry and stay of seasonal workers from third countries is not part of the overall migration policy. No third-country seasonal workers under the Directive have been admitted in the Netherlands in the past few years. A reason for this is that the labour market test applies when submitting an application for the Single Permit, which means that it will be examined, among other things, if there is no employee with the Dutch, EU/EEA

¹⁷ This question does not have to be answered by EMN NCPs. This question will guide the narrative for the section in the synthesis report.

Admission policies of seasonal workers from third countries in the EU and Norway

or Swiss nationality that is qualified for the job. Please see question 1 and 20 for further information on the labour market test and the Single Permit.

15. Did your Member State develop measures to attract seasonal workers?

Yes

No

If yes, how is this done? Please briefly explain.

16. Does your Member State rely on seasonal workers from third countries to fill labour market needs?

Yes

No

Please explain.

The Netherlands does not rely on seasonal workers from third countries to fill labour market needs. No third-country seasonal workers under the Directive have been admitted in the Netherlands in the past few years. A reason for this is that the labour market test applies when submitting an application for the Single Permit, which means that it will be examined, among other things, if there is no employee with the Dutch, EU/EEA or Swiss nationality that is qualified for the job. Please see question 1 and 20 for further information on the labour market test and the Single Permit.

a. If yes, for which sectors and what are these labour market needs? *Please explain.*

b. Did the migration of seasonal workers who came to your Member State between 2016-2019 help to address the labour market needs of your Member State?

Yes

No

To some extent

Please explain.

This question is not applicable to the Netherlands. No third-country seasonal workers under the Directive have been admitted in the Netherlands between 2016-2019.

17. Does your Member State implement an annual quota for seasonal workers?

Yes

No

a. If yes, is this a general quota or is it applied to specific sectors or to certain third countries?

Please explain.

b. If yes, was this quota fulfilled between 2016-2019?

Yes

No

18. What was the average processing time and costs (in euros) for applications from third-country nationals for the purpose of carrying out seasonal work in 2018?

Please explain.

Admission policies of seasonal workers from third countries in the EU and Norway

This question is not applicable to the Netherlands. No third-country seasonal workers under the Directive have been admitted in the Netherlands in 2018.

19. If your Member State has alternative categories of migrant workers who perform temporary work of a cyclical nature who are not covered by the Seasonal Workers Directive (see question 11):

a. Does your Member State have one or more specific national schemes to cover these categories?

Yes

No

Please briefly explain.

The Netherlands has no alternative categories of migrant workers who perform temporary work of a cyclical nature who are not covered by the Seasonal Workers Directive.

b. What is the reason for the existence of such specific national schemes? I.e. Why are employers more likely to use these national schemes instead of the one established in the Directive?

Please briefly explain.

This question is not applicable to the Netherlands. The Netherlands has no alternative categories of migrant workers who perform temporary work of a cyclical nature who are not covered by the Seasonal Workers Directive.

20. Does your Member State apply a labour market test to seasonal workers?

Yes

No

Please briefly explain.

When a third-country national wants to stay and work in the Netherlands as a seasonal worker, the third country national or the employer has to apply for a Single Permit. The Single Permit combines the residence permit and the work permit (TWV) and entitles the third-country national to stay and work in the Netherlands. You can apply for the Single Permit at The Immigration and Naturalisation Service (IND). For the labour market aspect, The IND consults the Netherlands Employees Insurance Agency (UWV). The UWV assesses the request based on the criteria of the Foreign Nationals Employment Act (Wav). This assessment is the so-called labour market test. The UWV examines among other things if there is no employee with the Dutch, EU/EEA or Swiss nationality that is qualified for the job.¹⁸ The IND takes a decision on the basis of the advice of UWV. See also question 1 for further information on the labour market test.

21. Does your Member State facilitate the re-entry of seasonal workers?¹⁹

¹⁸ Please visit the website of the UWV for all the conditions that apply:

<https://www.werk.nl/werkgevers/wervingsadvies/werkvergunning/voorwaarden/>. Last accessed on 31 March 2020.

¹⁹ This question refers to measures included within Art. 16 of the Directive and any other measures. Art. 16 of the Seasonal Workers Directive provides that Member States shall facilitate re-entry of third-country nationals who were admitted to that Member State as

Yes No *If yes, how is this done? Please briefly explain.*

Yes, in theory the Netherlands facilitates the re-entry of seasonal workers. When seasonal workers have stayed and worked in the Netherlands in the 5 years before they apply for a permit again, they are exempted from the requirement to submit one or more of the documents necessary for the application because this information is already submitted before.²⁰

22. Does your Member State cooperate with third countries to attract seasonal workers (e.g. bilateral or multilateral agreements)?

Yes No *Please briefly explain.*

The Netherlands does not cooperate with third countries to attract seasonal workers. No third-country seasonal workers under the Directive have been admitted in the Netherlands in the past few years as a result of the labour market test which applies when submitting the application.

23. Who are the relevant actors in attracting seasonal workers (e.g. recruitment agencies)?

Please briefly explain.

This question is not applicable to the Netherlands. The Netherlands does not cooperate with third countries to attract seasonal workers.

24. How are employers informed about the procedure for hiring seasonal workers?

Please briefly explain. If applicable, please also mention any support provided to employers to hire seasonal workers.

In the Netherlands, employers can find information about the requirements for hiring third-country nationals on the website of the Employee Insurance Agency (UWV).²¹ There is no specific information about the procedure for hiring third-country national seasonal workers. In practice, no third-country seasonal workers under the Directive have been admitted in the Netherlands in the past few years as a result of the labour market test which applies when submitting the application, therefore specific information about the procedure for hiring seasonal workers is not applicable.

seasonal workers at least once within the previous five years, and who fully respected the conditions applicable to seasonal workers under this Directive during each of their stays. The facilitate may include measures such as: the grant of an exemption from the requirement to submit one or more of the documents necessary for admission,; the issuing of several seasonal worker permits in a single administrative act; an accelerated procedure leading to a decision on the application for a seasonal worker permit or a long stay visa; priority in examining applications for admission as a seasonal worker.

²⁰ This is in accordance with the Aliens Act Implementation Guidelines 2000, article 24a.

²¹ <https://www.werk.nl/werkgevers/wervingsadvies/werkvergunning/aanvragen/gvva/> (in Dutch).

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25. Can seasonal workers apply for a change of status while they are in your Member State for the purpose of seasonal work (i.e. if they find another job, a permanent contract, etc)?

Yes

No

If yes, please explain.

Yes, in theory seasonal workers can apply for a change of status while they are in the Netherlands for the purpose of seasonal work. You are eligible for a change of status when you meet all the requirements for the new status.

26. Has your Member State carried out an evaluation of the implementation of the Seasonal workers Directive at national level? If so, did it conclude anything as to whether the introduced measures were sufficient in attracting seasonal workers?

Yes

No

Please explain.

The Netherlands has not carried out an evaluation of the implementation of the Seasonal Workers Directive as no third-country seasonal workers under the Directive have been admitted in the Netherlands in the past few years.

27. Is your Member State aware of any misuse (e.g. employers hiring third-country seasonal workers for non-seasonal work) in the application of the Directive?

Yes

No

Please briefly explain.

This question is not applicable to the Netherlands. No third-country seasonal workers under the Directive have been admitted in the Netherlands in the past few years as a result of the labour market test which applies when submitting the application.

28. Are there any good practice examples in relation to the attraction of seasonal workers in your Member State?

Yes

No

Please briefly explain.

This question is not applicable to the Netherlands.

Section 3: Protection and rights of seasonal workers

Research Question 3: How does the Seasonal Workers Directive achieve its goal of protecting seasonal workers and their rights?²²

Please note that all questions in this section refer to seasonal workers covered by the Directive, except question 39 and 40.

Sub-questions:

29. Does your Member State apply restrictions to the equal treatment between seasonal workers from third countries and nationals of your Member State who carry out comparable employment activities, particularly with regard to:

a. Family benefits;²³

Yes

No ²⁴

If yes, please briefly explain.

b. Unemployment benefits;

Yes

No ²⁵

If yes, please briefly explain.

c. Educational and vocational training not linked to the specific employment activity;²⁶

Yes

No ²⁷

If yes, please briefly explain.

d. Tax benefits in cases where the registered or usual place of residence of the family members of the seasonal worker for whom he/she claims benefits, does not lie in the territory of the Member State concerned.²⁸

²² This question does not have to be answered by EMN NCPs. This question will guide the narrative for the section in the synthesis report.

²³ Art. 23(2)(i) of the Seasonal Workers Directive provides that Member States may restrict equal treatment under point (d) of the first subparagraph of paragraph 1 by excluding family benefits and unemployment benefits, without prejudice to Regulation € No1231/2010.

²⁴ Please see the Explanatory Memorandum of the implementation of the Directive in the Netherlands:
<https://zoek.officielebekendmakingen.nl/kst-34590-3.pdf> (in Dutch). Last accessed on 30 April 2020.

²⁵ Ibid.

²⁶ Art. 23(2)(ii) of the Seasonal Workers Directive provides that Member States may restrict equal treatment under point (g) of the first subparagraph of paragraph 1 by limiting its application to education and vocational training which is directly linked to the specific employment activity and by excluding study and maintenance grants and loans or other grants and loans.

²⁷ Please see the Explanatory Memorandum of the implementation of the Directive in the Netherlands:
<https://zoek.officielebekendmakingen.nl/kst-34590-3.pdf> (in Dutch). Last accessed on 30 April 2020.

²⁸ Art. 23(2)(iii) of the Seasonal Workers Directive provides that Member States may restrict equal treatment under point (i) of the first subparagraph of paragraph 1 with respect to tax benefits by limiting its application to cases where the registered or usual place of residence of the family members of the seasonal worker for whom he/she claims benefits, lies in the territory of the Member State concerned.

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Yes No ²⁹*If yes, please briefly explain.*

- e. Are there any practical difficulties to ensuring equal treatment in the areas defined in the Directive?

Yes No ³⁰*If yes, please briefly explain.*

30. Who are the most important actors in your Member State regarding the protection of seasonal workers' rights and what is their role? *Please explain. Please distinguish between public and private actors in your answer (e.g. Trade Unions, Chambers of Commerce, etc.).*

In the Netherlands, there are several actors involved in the protection of seasonal workers' rights. However, this only applies to seasonal workers from the EU/EER. No third-country seasonal workers under the Directive have been admitted in the Netherlands in the past few years. Therefore this question is not applicable to the Netherlands.

31. Is there a framework in place enabling the transfer of pension contributions to origin countries?

Yes No *if yes, please explain.*³¹

32. If your Member State has alternative categories of migrant workers performing temporary work not covered by the Directive, do these categories enjoy the same rights as those granted by the Directive?

Yes No

The Netherlands has no alternative categories of migrant workers who perform temporary work of a cyclical nature who are not covered by the Seasonal Workers Directive.

If yes, please briefly explain.

33. What does your Member State consider an "adequate standard of living" in relation to accommodation? How does your Member State ensure that seasonal workers benefit from an "accommodation that ensures an adequate standard of living" for the duration of his or her stay?³²

²⁹ Please see the Explanatory Memorandum of the implementation of the Directive in the Netherlands: <https://zoek.officielebekendmakingen.nl/kst-34590-3.pdf> (in Dutch). Last accessed on 30 April 2020.

³⁰ Ibid.

³¹ Art.23(1) provides that seasonal workers moving to a third country, or the survivors of such seasonal workers residing in a third-country deriving rights from the seasonal worker, shall receive statutory pensions based on the seasonal worker's previous employment and acquired in accordance with the legislation set out in Article 3 of Regulation (EC) No 883/2004, under the same conditions and at the same rates as the nationals of the Member States concerned when they move to a third country

Please briefly explain.

In the Netherlands, there are several procedures and mechanisms in place that aim to contribute to an adequate standard of living for seasonal workers. However, these mechanisms are only aimed at seasonal workers from the EU/EER. As no third-country seasonal workers under the Directive have been admitted in the Netherlands in the past few years, in practice this question is not applicable to the Netherlands.

- a. Are there any good practices in relation to ensuring adequate accommodation, considering the temporary nature of stay of seasonal workers?

Yes

No

If yes, please briefly explain

34. Does your Member States have procedures/mechanisms in place to ensure that seasonal workers and their employers are informed of their rights and duties?

Yes

No

If yes, please briefly explain

35. Does your Member State have any specific procedures/mechanisms in place to monitor, assess and carry out inspections on whether:³³

- a. Seasonal workers can exercise their equal treatment rights and other rights granted in practice? How does that work and who are the actors involved?

Yes

No

If yes, please briefly explain

- b. Seasonal workers abide by the rules (e.g. no overstaying)? How does that work and who are the actors involved?

Yes

No

If yes, please briefly explain

³² Art. 20(1) provides that Member States shall require evidence that the seasonal workers will benefit from accommodation that ensures an adequate standard of living according to national law and/or practice, for the duration of his or her stay. The competent authority shall be informed of any change of accommodation of the seasonal worker.

³³ Art. 24 provides that Member States shall measures to prevent possible abuses and to sanction infringements of this Directive. Measures shall include monitoring, assessment and, where appropriate, inspection in accordance with national law or administrative practice (Directive 2014/36/EU).

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- c. Employers abide by the rules (e.g. no exploitation)? How does that work and who are the actors involved? Is there a focus on any specific economic sectors?

Yes

No

If yes, please briefly explain

36. Does your Member State collect statistics on the procedures/mechanisms described in question 35?

Yes

No

If yes, please provide the statistical information for the year 2018.

37. How can seasonal workers lodge complaints against their employers?³⁴ Did your Member State set up some specific procedures to protect seasonal workers who lodge complaints?

Yes

No³⁵

38. Are there specific sanctions in place in your Member State against employers who have not fulfilled their duties under the Seasonal Workers Directive?

Yes

No³⁶

If yes, please briefly explain

39. Do migration authorities and labour authorities cooperate in relation to the monitoring of seasonal workers and their employers?

Yes

No

If yes, please briefly explain the nature of cooperation and the objective, i.e. the protection of seasonal workers, fulfilment of their rights, detection of irregularly-staying seasonal workers or overstayers, etc.

³⁴ Art.25 provides that Member States shall ensure that there are effective mechanisms through which seasonal workers may lodge complaints against their employers directly or through third parties which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring compliance with this Directive, or through a competent authority of the Member State when provided for by national law.

³⁵ *Parliamentary Papers II*, 2016-2017, 34590, nr. 6.

³⁶ Information provided for by the Inspectorate SZW on 2 April 2020.

In general, there is cooperation between the Immigration- and Naturalization Service (IND) and The Inspectorate SZW (ISZW) with regard to enforcement of the rules on labor migration.³⁷ ISZW is the responsible authority to investigate whether there is a violation of the Aliens Employment Act. Nevertheless, since no seasonal workers have been admitted to the Netherlands, there is no specific cooperation in relation to the monitoring of seasonal workers and their employers.

40. Has your Member State detected seasonal workers who are victims of exploitation or human trafficking?

Yes

No³⁸

If yes, please briefly explain.

41. Are there any good practice examples or research/evaluation findings of how the rights of seasonal workers have been ensured in your Member State?

Yes

No

If yes, please briefly explain.

Section 4: Conclusions and lessons learned

Please comment on the findings of your national report by drawing conclusions, and identifying any key challenges and lessons learned. Please make reference to the three research questions of the study in your reply.

Profile of third-country national seasonal workers in the Netherlands

The Netherlands has established a restrictive policy regarding third-country national seasonal workers. The labour market test applies to applicants for a residence permit with regard to seasonal work. If there are labour shortages in the Netherlands, the Employee Insurance Agency (UWV) will first assess whether there are Dutch nationals, other EU/EER-nationals or third-country nationals who are legally residing in the Netherlands and free on the labour market who can fulfil the job vacancy. Only if this is not the case, a third-country national from a country outside the EU/EER can be hired as a seasonal worker and will receive a work permit. So far the latter has not occurred, and therefore no third-country seasonal workers have been admitted to the Netherlands under the Seasonal Workers Directive (2014/36/EU). Therefore, it is not possible to draft a profile of third-country national seasonal workers in the Netherlands.

No attraction of seasonal workers

Because the labour market needs could be satisfied by the national labour supply or EU/EER-nationals in the last few years, the Netherlands does not place efforts on attracting seasonal workers to address labour market needs. It is clear that the entry and stay of seasonal workers from third countries is not part of the overall policies on migration and there is no reliance on this category of labour supply. This is also reflected in the fact that the Netherlands does not have alternative categories of migrant workers who perform temporary work of a cyclical nature who are not covered by the Seasonal Workers Directive. Because of this approach towards seasonal workers, there have not been any evaluations of the implementation of the Seasonal workers Directive or good practices in relation to the attraction of seasonal workers.

Protection of seasonal workers

³⁷ Information provided for by the Inspectorate SZW on 2 April 2020.

³⁸ Information provided for by the Inspectorate SZW on 2 April 2020.

In the Netherlands the implementation of the different articles of the Seasonal Workers Directive did not always require changes in the established national policy and law on seasonal workers. In a lot of cases, no procedures have been established for protection specifically adjusted to third-country national seasonal workers. The protection of potential future seasonal workers and their rights would in theory be covered under the general procedures for protection of workers. Because no seasonal workers have been admitted to the Netherlands in the last few years, the question about the way future seasonal workers would be protected is for the moment hypothetical.

Annex: national statistics related to seasonal workers

42. Statistics related to seasonal workers are available within the general statistics for first permits for remunerated activities (migr_resocc) and the specific datasets for authorisations for the purpose of seasonal work (migr_ressw1_1 and migr_ressw2). In light of this, if your Member States reports statistics to Eurostat for dataset migr_resocc but not for datasets migr_ressw1_1 and migr_ressw2, do these general statistics indicate those covered by the Directive or not (or do they represent the alternative categories)? Can those be used in the absence of the specific statistics?

Please explain.

43. Please fill out/complete the statistical annex (to be shared with each EMN NCPs by 13 March 2020).